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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 AMERICAN AUTOMOBILE ) CV 15-7112 RSWL (KSx)  
12 ASSOCIATION, INC., a )  
13 Connecticut corporation, )  
14 Plaintiff, )  
15 v. ) ORDER Re: PLAINTIFF'S  
16 H&H TOWING SERVICE, an ) MOTION FOR DEFAULT  
17 entity of unknown form; ) JUDGMENT [20]  
18 HASON RUBEN TORRES, an )  
19 individual; and DOES 1 )  
20 through 10, inclusive, )  
21 Defendants. )

22  
23 Now before this Court is Plaintiff American  
24 Automobile Association Inc.'s ("Plaintiff") Motion for  
25 Default Judgment and request for entry of a permanent  
26 injunction against Defendants H&H Towing Service and  
27 Hason Ruben Torres (collectively "Defendants") [20].  
28

I. BACKGROUND

A. Factual Background

Plaintiff is a corporation organized and existing  
under the laws of Connecticut, with its principal place

1 of business in Florida. Compl. ¶ 4. Defendant H&H  
2 Towing Service is an entity with its principle place of  
3 business in Los Angeles, California. Id. at ¶ 5.  
4 Defendant Hason Ruben Torres is an individual doing  
5 business as H&H Towing Service, residing in Los Angeles,  
6 California. Id. at ¶ 6.

7 Plaintiff is the owner of the "AAA" mark (U.S.  
8 service mark Registration No. 0,829,265) and its  
9 correlating stylized logo (U.S. service mark  
10 Registration No. 2,158,654) (collectively, "the AAA  
11 Marks" or "the Marks"), used in connection with a number  
12 of services, including providing emergency road  
13 services. Id. at ¶¶ 11, 12. Plaintiff has been serving  
14 motorists under the AAA Marks for over 100 years. Id.  
15 at ¶ 13. Plaintiff, by virtue of the services offered  
16 under the AAA Marks, is recognized as providing  
17 emergency road services. Id. at ¶ 15.

18 Defendants are in the business of providing  
19 emergency road services and currently use the AAA Marks  
20 in conducting and promoting their business.  
21 Specifically, Defendants display such marks on their  
22 advertising. Id. at ¶ 16. Plaintiff maintains  
23 Defendants are not authorized to use the AAA Marks, nor  
24 are Defendants affiliated with Plaintiff. Id. at ¶ 17.  
25 On September 9, 2015, Plaintiff filed its Complaint  
26 against Defendants for injunctive relief ("Complaint"),  
27 alleging violations of the Lanham Act [1].

28 /

1 **B. Procedural Background**

2 Plaintiff filed this action against Defendants on  
3 September 9, 2015 [1]. The Summons and Complaint were  
4 served via substituted service on Defendants on October  
5 24, 2015 [13, 14]. Declaration of Michael Adams ("Adams  
6 Decl.") ¶ 5, ECF No. 20-3. On November 30, 2015,  
7 Plaintiff filed a request for the Clerk of Court to  
8 enter Default against Defendants [16, 17]. Id. at ¶ 6.  
9 On December 1, 2015, the Clerk entered default against  
10 Defendants [18]. Id. at ¶ 7. As per the date of  
11 Plaintiff's Motion [20], Defendants had not filed any  
12 responsive pleadings or otherwise appeared in this  
13 Action. On December 28, 2015, Plaintiff filed the  
14 present Motion for Default Judgment against Defendants  
15 [20]. Plaintiff served Defendants with this Motion and  
16 its supporting papers on December 30, 2015 by mail [21].  
17 See Proof of Serv. [21].

18 **II. ANALYSIS**

19 **A. Legal Standard**

20 1. Motion for Default Judgment

21 Default judgment is within the discretion of the  
22 district court. Aldabe v. Aldabe, 616 F.2d 1089, 1092  
23 (9th Cir. 1980); see Fed. R. Civ. P. 55. A party  
24 applying to the Court for default judgment must satisfy  
25 both procedural and substantive requirements.

26 Procedurally, the requirements set forth in Federal  
27 Rules of Civil Procedure Rules 55 and 56, and Local Rule  
28 55-1 must be met. See Vogel v. Rite Aid Corp., 992 F.

1 Supp. 2d 998, 1006 (C.D. Cal 2014). Local Rule 55-1  
2 provides: "When an application is made to the Court for  
3 a default judgment, the application shall be accompanied  
4 by a declaration in compliance with F.R.Civ.P. 55(b)(1)  
5 and/or (2) and include the following: (a) When and  
6 against what party the default was entered; (b) The  
7 identification of the pleading to which default was  
8 entered; (c) Whether the defaulting party is an infant  
9 or incompetent person, and if so, whether that person is  
10 represented by a general guardian, committee,  
11 conservator or other representative; (d) That the  
12 Service Members Civil Relief Act, 50 U.S.C. App. § 521,  
13 does not apply; and (e) That notice has been served on  
14 the defaulting party, if required by Federal Rule of  
15 Civil Procedure 55(b)(2)." L.R. 55-1.

16 Substantively, the Ninth Circuit has directed that  
17 courts consider the following factors, referred to as  
18 the Eitel factors, in deciding whether to enter default  
19 judgment: "(1) the possibility of prejudice to  
20 plaintiff, (2) the merits of plaintiff's substantive  
21 claims, (3) the sufficiency of the complaint, (4) the  
22 sum of money at stake in the action, (5) the possibility  
23 of a dispute concerning the material facts, (6) whether  
24 defendant's default was the product of excusable  
25 neglect, and (7) the strong public policy favoring  
26 decisions on the merits." See Vogel, 992 F. Supp. 2d at  
27 1005; see also Eitel v. McCool, 782 F.2d 1470, 1471-72  
28 (9th Cir. 1986).

1 In analyzing these factors, the Court may base its  
2 judgment entirely upon the affidavits submitted by the  
3 parties. Davis v. Fendler, 650 F.2d 1154, 1161 (9th  
4 Cir. 1981). If the Court determines that the defendant  
5 is in default, "the factual allegations of the  
6 complaint, other than those relating to damages, are  
7 taken as true.'" Televideo Sys., Inc. v. Heidenthal,  
8 826 F.2d 915, 917-918 (9th Cir. 1987) (quoting Geddes v.  
9 United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977)).  
10 Additionally, "[w]hen entry of judgment is sought  
11 against a party who has failed to plead or otherwise  
12 defend, a district court has an affirmative duty to look  
13 into its jurisdiction over both the subject matter and  
14 the parties." In re Tuli, 172 F.3d 707, 712 (9th Cir.  
15 1999).

16 **B. Analysis**

17 Plaintiff seeks entry of default judgment against  
18 Defendants for failure to respond or otherwise defend  
19 themselves in this matter. See generally Mot., ECF No.  
20 20. For the reasons set forth below, the Court **GRANTS**  
21 Plaintiff's Motion for Default Judgment.

22 1. Jurisdiction and Service of Process are Proper

23 In considering whether to enter default judgment  
24 against a party for failing to plead or otherwise defend  
25 himself in an action, a district court must first  
26 determine whether it has jurisdiction over the subject  
27 matter and the parties to the case. In re Tuli, 173  
28 F.3d 707, 712 (9th Cir. 1999).

1 Generally, a defect in personal jurisdiction is a  
2 defense that must be asserted or waived by a party. Id.  
3 at 712 (citing Fed. R. Civ. P. 12(h)(1)). However, when  
4 a court is considering whether to enter a default  
5 judgment, the court may dismiss the action *sua sponte*  
6 for lack of personal jurisdiction, for a "judgment  
7 entered without personal jurisdiction over the parties  
8 is void." Id. This Court should find that service of  
9 process was proper, and the Court has jurisdiction over  
10 the parties and the subject matter in this action.

11 a. *Personal Jurisdiction*

12 In states where no applicable federal statute  
13 governs personal jurisdiction, that state's long-arm  
14 statute applies. See Panavision Int'l, L.P. v. Toeppen,  
15 141 F.3d 1316, 1320 (9th Cir. 1998). The exercise of  
16 personal jurisdiction over a nonresident defendant  
17 requires the presence of two factors: (1) California's  
18 laws must provide a basis for exercising personal  
19 jurisdiction, and (2) the assertion of personal  
20 jurisdiction must comport with due process. Hirsch v.  
21 Blue Cross, Blue Shield of Kansas City, 800 F.2d 1474,  
22 1477 (9th Cir. 1986). California's long arm statute  
23 permits the exercise of personal jurisdiction to the  
24 fullest extent permitted by due process. See Cal. Civ.  
25 Proc. Code § 410.10; Panavision, 141 F.3d at 1320.  
26 "Because California's long-arm jurisdictional statute is  
27 coextensive with federal due process requirements, the

1 jurisdictional analyses under state law and federal due  
2 process are the same." Schwarzenegger v. Fred Martin  
3 Motor Co., 374 F.3d 797, 800-01 (9th Cir. 2004). Thus,  
4 only a due process analysis is required here.

5 Due process requires that a defendant have "certain  
6 minimum contacts with [the forum state] such that the  
7 maintenance of the suit does not offend traditional  
8 notions of fair play and substantial justice." Int'l  
9 Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)  
10 (internal quotation marks omitted). Depending on the  
11 nature and scope of the defendant's contacts with the  
12 forum, jurisdiction may be general or specific to a  
13 cause of action. Roth v. Garcia Marquez, 942 F.2d 617,  
14 620 (9th Cir. 1991). When a defendant's contacts with  
15 the forum state are "substantial" or "continuous and  
16 systematic," general jurisdiction may be exercised over  
17 that defendant for any cause of action, even if it is  
18 unrelated to the defendant's activities with the forum  
19 state. Schwarzenegger, 374 F.3d at 801-02; Data Disc.  
20 Inc. v. Sys. Tech. Assocs., 557 F.2d 1280, 1287 (9th  
21 Cir. 1977). A court has in personam jurisdiction over  
22 an individual who resides within a particular location  
23 over which the Court has jurisdiction.

24 This Court finds it has personal jurisdiction over  
25 all parties. Defendant H&H Towing Service is an entity  
26 with its principal place of business in Los Angeles,  
27 California. Compl. ¶ 5. Defendant Torres is an

individual residing in Los Angeles, California. Id. at ¶ 6.

b. *Subject Matter Jurisdiction*

This Court finds it has jurisdiction under 28 U.S.C. section 1338(a) as this action arises under the Lanham Act, 15 U.S.C. sections 1114, 1125(a), and 1125(c)(1), as well as under pendent jurisdiction under 28 U.S.C. section 1367.

*c. Service of Process*

Plaintiff served the Summons and Complaint on Defendants via substituted service on October 24, 2015, as evidenced by the Proofs of Service on file with this Court [13, 14]. Plaintiff served Defendants with the Clerk's Entry of Default against Defendants on December 2, 2015 [19]. Plaintiff served Defendants with the present Motion and its correlating declarations on December 30, 2015 [21]. Accordingly, the Court finds service of process was proper.

## 2. Plaintiff has Satisfied the Procedural Requirements for Default Judgment

Here, the Court finds Plaintiff met all procedural requirements for default judgment. First, default judgment was entered by the Clerk of Court as to Defendants on December 1, 2015 [18]. Second, default was entered to the Complaint filed in this proceeding. Third, Defendants are neither infants nor incompetent persons. See Adams Decl. ¶¶ 8, 9, ECF No. 20-3.



1 Fourth, Defendants do not serve in the U.S. military,  
2 thus Defendants are not exempt under the Servicemembers  
3 Civil Relief Act. Id. Fifth, Defendants were served at  
4 their respective last known residences. Id.

5 3. Plaintiff has Satisfied the Substantive  
6 Requirements for Default Judgment

7 a. *Risk of Prejudice to Plaintiff*

8 The first Eitel factor considers the possibility of  
9 prejudice to the plaintiff if default judgment is not  
10 granted. See Eitel, 782 F.2d at 1471. Courts have  
11 found a plaintiff would suffer prejudice absent a  
12 default judgment if the plaintiff "would be denied the  
13 right to judicial resolution of the claims presented,  
14 and would be without other recourse for recovery."  
15 Elektra Entm't Group Inc. v. Crawford, 226 F.R.D. 388,  
16 392 (C.D. Cal. 2005) (citing Eitel, 782 F.2d at 1471-  
17 72).

18 Here, the Court finds this factor weighs in favor  
19 of entering default judgment against Defendants.  
20 Plaintiff alleges it will be prejudiced by Defendants'  
21 continued use of the AAA Marks because such use is  
22 likely to confuse consumers and cause damage to  
23 Plaintiff's business. Mot. 3:27-4:2. Plaintiff has  
24 been serving motorists under the AAA Marks for more than  
25 100 years. Compl. ¶ 13. Plaintiff alleges Defendants'  
26 use of the AAA Marks will continue to cause a likelihood  
27 of confusion, mistake, and deception with respect to:

1 (a) the source and origin of the goods and services  
2 offered by Defendants; (b) the affiliation, connection,  
3 and association of Plaintiff with Defendants, and (c)  
4 Plaintiff's sponsorship, approval, and/or control of the  
5 goods and services offered by defendants, in violation  
6 of the Lanham Act. Id. at ¶ 23. Upon review of  
7 Plaintiff's Motion and the supporting record, this Court  
8 finds Plaintiff "will be left without a remedy if  
9 default judgment is not entered in [its] favor." See  
10 Gucci Am., Inc. v. Huoqing, 2011 U.S. Dist. LEXIS 783,  
11 \*29 (N.D. Cal. Jan. 3, 2011). This Court finds, as  
12 Plaintiff contends, that unless restrained and enjoined  
13 by this Court, Defendants will continue to cause a  
14 likelihood of consumer confusion, mistake, and  
15 deception. This factor weighs in favor of default  
16 judgment.

17           b. *The merits of Plaintiff's substantive*  
18                 *claims and sufficiency of the Complaint.*

19           The second and third Eitel factors consider the  
20 merits of the plaintiff's substantive claims and the  
21 sufficiency of the complaint. "Under an [Eitel]  
22 analysis, [these factors] are often analyzed together."  
23 Tate, 2015 U.S. Dist. LEXIS 3607 at \*5 (quoting Dr. JKL  
24 Ltd. v. HPC IT Educ. Ctr., 749 F.Supp.2d 1038, 1048  
25 (N.D. Cal. 2010)). "These two factors require a  
26 plaintiff to 'state a claim on which the [plaintiff] may  
27 recover.'" Id. (quoting Danning v. Lavine, 572 F.2d

1 1386, 1388 (9th Cir. 1978)).

2 i. *Plaintiff has asserted a meritorious*  
3 *claim for Trademark Infringement and*  
4 *Unfair Competition.*

5 Plaintiff's first claim against Defendants alleges  
6 trademark infringement and unfair competition in  
7 violation of Sections 32 and 43(a) of the Lanham Act.  
8 Mot. 4:19-21.

9 To prevail on a claim for trademark infringement  
10 and unfair competition under the Lanham Act, Plaintiffs  
11 must establish that the "trade mark infringer's use of  
12 [its] mark creates a likelihood that the consuming  
13 public will be confused as to who makes the product."  
14 Jada Toys, Inc. v. Mattel, Inc., 518 F.3d 628, 632 (9th  
15 Cir. 2008).

16 Generally, to assess whether a defendant has  
17 infringed on a plaintiff's trademark, courts apply a  
18 "likelihood of confusion" test that asks whether use of  
19 the plaintiff's trademark by the defendant is "likely to  
20 cause confusion or to cause mistake, or to deceive as to  
21 the affiliation, connection, or association" of the two  
22 products. Mattel, Inc. v. Walking Mountain Prods., 353  
23 F.3d 792, 806-07 (2003). The factors assessed in  
24 determining whether a defendant's use of a plaintiff's  
25 trademark results in a "likelihood of confusion" are:  
26 (1) the strength of the mark; (2) proximity of the  
27 goods; (3) similarity of the marks; (4) evidence of

1 actual confusion; (5) marketing channels used; (6) type  
2 of goods and the degrees of care likely to be exercised  
3 by the purchaser; (7) defendant's intent in selecting  
4 the mark; and (8) likelihood of expansion of the product  
5 lines. AMF Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-  
6 49 (9th Cir. 1979), abrogated in part on other grounds  
7 by Mattel Inc. v. Walking Mountain Prods., 353 F.3d 792,  
8 810 n. 19 (9th Cir. 2003). While courts analyze each of  
9 the eight factors "[t]he test is a fluid one and the  
10 plaintiff need not satisfy every factor, provided that  
11 strong showings are made with respect to some of them."  
12 Surfvivor Media, Inc. v. Survivor Prods., 406 F.3d 625,  
13 631 (9th Cir. 2005). The importance of any one factor  
14 will vary case by case, and a court may reach a  
15 conclusion of confusion by only considering a subset of  
16 the factors. Brookfield Commc'ns, Inc. v. West Coast  
17 Entm't Corp., 174 F.3d 1036, 1054 (9th Cir. 1999).

18 Here, the Court finds Plaintiff makes a "strong  
19 showing" with respect to six of the eight Sleekcraft  
20 factors. Regarding the first factor, Plaintiff shows  
21 the AAA Marks are strong. Plaintiff owns numerous  
22 trademark registrations for its AAA Marks, which are  
23 employed for various goods and services, including  
24 emergency roadside service. Compl. ¶¶ 11-15, 19-22.  
25 Plaintiff has been serving motorists under the AAA Marks  
26 for more than 100 years. Id. at ¶ 13. Plaintiff is the  
27 owner of numerous other registered trademarks

1 incorporating the AAA Marks in the United States and  
2 abroad. Id. at ¶ 14. Plaintiff, by virtue of the  
3 services offered under its AAA Marks, is recognized both  
4 domestically and internationally as providing emergency  
5 road services. Id. at ¶ 15.

6 Regarding the second factor, the proximity of  
7 services, this Court finds Plaintiff shows such  
8 proximity exists here. Defendants provide emergency  
9 roadside services. Plaintiff endorses providers of  
10 emergency roadside services and allows providers of such  
11 services to use or display the AAA Marks if they meet  
12 AAA's evaluation criteria. Compl. ¶ 22, Declaration of  
13 James G. Brehm ("Brehm Decl") ¶ 3, ECF No. 20-10.  
14 Defendants' use of the AAA Marks would likely cause  
15 consumers to assume that an association exists between  
16 Defendants' emergency roadside services and those  
17 approved by Plaintiff.

18 The third Sleekcraft factor considers whether the  
19 marks are identical. Here, the Court finds the marks  
20 are identical. Plaintiff's original "AAA" mark is  
21 comprised of the letters "AAA" superimposed on an orbit  
22 design. Adams Decl., ¶ 4, Exs. C, D. Defendants'  
23 business card contains the same exact mark on the back  
24 side of the card along with the logos of several car  
25 insurance companies. Declaration of Keith Levin ("Levin  
26 Decl.") ¶¶ 2-3, Ex. A, ECF No. 20-1. As to the fourth  
27 factor, both parties appear to use the same marketing

1 channels to advertise their emergency roadside services.  
2 Here, both Plaintiff and Defendants display the AAA  
3 Marks on marketing materials, such as business cards,  
4 for emergency roadside and towing services. Compl. ¶¶  
5 15-16; Brehm Decl., ¶¶ 2-3.

6 As to the fifth factor, given the nature of  
7 services offered by Defendants, consumers are unlikely  
8 to exercise a high degree of care and are likely to be  
9 misled by Defendants' use of the AAA Marks. This Court  
10 finds that because both parties offer emergency roadside  
11 services, consumers are likely to believe that a  
12 business using the AAA Marks in connection with  
13 emergency roadside services has met Plaintiff's  
14 criteria, has earned Plaintiff's seal of approval, or is  
15 otherwise associated with or endorsed by Plaintiff.  
16 Lastly, this Court finds Defendants' unauthorized use of  
17 the AAA Marks demonstrates improper intent. Plaintiff  
18 alleges Defendants were aware of Plaintiff's exclusive  
19 rights to the AAA Marks in connection with emergency  
20 roadside services. Mot. 6:21-22. This indicates  
21 Defendants' improper intent to benefit from a falsely  
22 implied association with Plaintiff.

23 This Court finds Plaintiff has made a strong  
24 showing on six of the eight Sleekcraft factors, and  
25 accordingly has asserted a meritorious claim for Federal  
26 Trademark Infringement and Unfair Competition. This  
27 Court further finds Plaintiff is likely to succeed on

1 the merits of this claim.

2           ii. *Plaintiff has asserted a meritorious*  
3           *claim for Federal and State Trademark*  
4           *Dilution.*

5       Plaintiff brought dilution claims under both  
6 federal and California State law. Mot. 7-9. The  
7 analysis under each is the same. Panavision Int'l, L.P.  
8 v. Toeppen, 141 F.3d 1316, 1324 (9th Cir. 1998). In  
9 order to prove a claim for trademark dilution, a  
10 plaintiff must show that (1) the mark is famous and  
11 distinctive; (2) the defendant is making use of the mark  
12 in commerce; (3) the defendant's use began after the  
13 mark became famous; and (4) the defendant's use of the  
14 mark is likely to cause dilution by blurring or dilution  
15 by tarnishment. Jada Toys, 518 F.3d at 634; 15 U.S.C. §  
16 1125(c)(1); Cal. Bus. & Prof. Code § 14330. Neither  
17 federal law nor California state law requires a showing  
18 of competition or likelihood of confusion to succeed on  
19 a dilution claim. Nissan Motor Co. v. Nissan Computer  
20 Corp., 378 F.3d 1002, 1011 (9th Cir. 2004) (citing 15  
21 U.S.C. § 1127); Cal. Bus. & Prof. Code § 14330.

22       First, Plaintiff argues that the AAA Marks are  
23 famous and distinctive. Under 15 U.S.C. §  
24 1125(c)(2)(A), a mark is famous if it is widely  
25 recognized by the general consuming public of the United  
26 States as a designation of source of the goods or  
27 services of the mark's owner. 15 U.S.C. § 1125

1 (c)(2)(A). Factors that demonstrate a mark's fame are:  
2 (1) the duration, extent, and geographic reach of  
3 advertising and publicity of the mark, whether  
4 advertised or publicized by the owner or third parties;  
5 (2) the amount, volume, and geographic extent of sales  
6 of goods or services offered under the mark; (3) the  
7 extent of actual recognition of the mark; and (4)  
8 whether the mark was registered under the Act of March  
9 3, 1881, or the Act of February 20, 1905, or on the  
10 principal register. 15 U.S.C. § 1125(c)(2)(A).

11 As to the first factor, Plaintiff has used its  
12 original "AAA" mark and correlating logo in commerce  
13 since 1916 and 1997, respectively. Brehm Decl. ¶ 2.  
14 Plaintiff spends millions of dollars each year to  
15 promote the AAA Marks throughout the United States. Id.  
16 Plaintiff argues that as a result of this advertising,  
17 Plaintiff's trademarks, including the "AAA" mark, have  
18 acquired a high degree of distinctiveness and widespread  
19 recognition as symbols of the products and services that  
20 Plaintiff and its affiliate organizations provide. Id.  
21 This factor weighs in favor of finding the Marks famous  
22 and distinctive. As to the second factor, Plaintiff  
23 provides a variety of services, including but not  
24 limited to emergency road services. Compl. ¶ 11.  
25 Plaintiff serves customers all throughout the United  
26 States, including California. See Brehm Decl. ¶ 2, ECF  
27 No. 20-10. This factor weighs in favor of finding the



1 Marks famous and distinctive.

2 As to the third factor, Plaintiff argues that a  
3 significant segment of the population associates the AAA  
4 Marks with Plaintiff. Id. Plaintiff asserts that the  
5 public see the AAA Marks as a symbol that distinguishes  
6 products, services, and organizations that are  
7 affiliated with or endorsed by Plaintiff from those that  
8 are not. Id. This Court finds that as a result of the  
9 long period of use and extensive advertisement and sale  
10 of services under the AAA Marks, motorists and members  
11 of the general consumer population in the United States  
12 likely recognize the AAA Marks as identifying emergency  
13 road services provided by or endorsed by Plaintiff.  
14 This factor weighs in favor of finding the Marks famous  
15 and distinctive.

16 As to the fourth factor, Plaintiff argues that  
17 Plaintiff's registered Marks are valid, subsisting, and  
18 remain in full force and effect as evidence of the  
19 validity of Plaintiff's ownership of the Marks in  
20 connection with the services specified in the  
21 registration. Id. at ¶ 21. Plaintiff shows the  
22 registration mark for the AAA Marks is incontestible  
23 under section 15 of the Lanham Act, and constitutes  
24 conclusive evidence of Plaintiff's exclusive right to  
25 use the mark in connection with emergency road services.  
26 Id. at ¶ 20. This factor weighs in favor of finding the  
27 Marks famous and distinctive. Upon review of the

1 record, the Court finds Plaintiff has successfully shown  
2 that the Marks are famous and distinctive.

3 Second, Plaintiff shows Defendants are making use  
4 of the AAA Marks in commerce because Defendants display  
5 the mark on their business cards for providing emergency  
6 roadside services. Third, Plaintiff shows that the AAA  
7 Marks became famous before Defendant began using the  
8 Marks in connection with emergency roadside services.  
9 Compl. ¶ 20; Brehm Decl., ¶¶ 2-3, ECF No. 20-10.

10 Lastly, Plaintiff shows that Defendants' use of the  
11 Marks in their business has lessened the capacity of the  
12 Marks to identify and distinguish Plaintiff's services,  
13 thereby making Defendants' use of the AAA mark dilutive.  
14 Id. at 23-24. This Court finds that Defendants have  
15 created a false association between themselves and  
16 Plaintiff. This Court thus finds Plaintiff's federal  
17 and state trademark dilution claims are sufficiently  
18 pled in the Complaint, and Plaintiff is likely to  
19 succeed on the merits of these claims.

20           iii.       *Plaintiff has asserted a*  
21                       *meritorious claim for Common Law*  
22                       *Trademark Infringement.*

23 To prevail on its common law trademark infringement  
24 claim, Plaintiff must show that (1) it has a valid,  
25 protectable trademark, and (2) Defendant's use of the  
26 mark is likely to cause confusion. Applied Info. Scis.  
27 Corp. v. eBay, Inc., 511 F.3d 966, 969 (9th Cir. 2007).

1 There are three ways in which Plaintiff can establish it  
2 has a protectable interest: (1) it has a federally  
3 registered trademark in goods or services; (2) its mark  
4 is descriptive but has acquired a secondary meaning in  
5 the market; or (3) it has a suggestive mark, which is  
6 inherently distinctive and protectable. Id. at 970.  
7 Registration of a mark "on the Principal Register in the  
8 Patent and Trademark Office constitutes prima facie  
9 evidence of the validity of the registered mark and of  
10 [the registrant's] exclusive right to use the mark on  
11 the goods and services specified in the registration."  
12 Brookfield Commc'ns, Inc., 174 F.3d at 1047.

13 Here, Plaintiff has registered the AAA Marks with  
14 the United States Patent and Trademark Office. See  
15 Compl. Exs. A, B. Thus, Plaintiff has made a prima  
16 facie showing that it holds a valid, protectable  
17 interest in the use of the AAA Marks in connection with  
18 emergency roadside services. Further, as discussed  
19 above, Plaintiff has demonstrated that Defendants used  
20 the AAA Marks without consent and that such use is  
21 likely to cause confusion. As this Court finds  
22 Plaintiff has sufficiently alleged its claims in its  
23 Complaint, and Plaintiff's claims are likely to succeed  
24 on the merits, the second and third Eitel factors weigh  
25 in favor of default judgment.

26 c. *The sum of money at stake in the action and*  
27 *injunctive relief.*

1 The fourth Eitel factor deals with the money at  
2 stake in the action. Here, Plaintiff has abandoned its  
3 claim for damages and instead seeks a permanent  
4 injunction against Defendants. Mot. 4:5-6. Plaintiff  
5 seeks a permanent injunction preventing Defendants from  
6 using the AAA Marks, or any other marks or designs  
7 "confusingly similar" to the AAA Marks. Id. at 9:25-26.  
8 Plaintiff also requests that Defendants be required to  
9 remove and turn over the infringing materials.

10 "Injunctive relief is the remedy of choice for  
11 trademark infringement and unfair competition cases,  
12 since there is no adequate remedy at law for the injury  
13 caused by a defendant's continuing infringement."  
14 Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175,  
15 1180 (9th Cir. 1988). Under the Lanham Act, courts have  
16 the "power to grant injunctions, according to the  
17 principles of equity and upon such terms as the court  
18 may deem reasonable, to prevent the violation of any  
19 right of the registrant of a mark registered in the  
20 Patent and Trademark Office or to prevent a violation  
21 under subsection (a), (c) or (d) of section 1125 of this  
22 title." 15 U.S.C. § 1116(a). Additionally, when a  
23 defendant's violation of 15 U.S.C. 1125(a) (false  
24 designation of origin) or a willful violation under  
25 section 1125(c) (trademark dilution) is established, the  
26 Court has the power to order that "all labels, signs,  
27 prints, packages, wrappers, receptacles, and

1 advertisements bearing the infringement mark and in the  
2 possession of the defendant" be delivered and destroyed.  
3 15 U.S.C. § 1118. Under section 1118, the Court also  
4 has the power to order that "the word, term, name,  
5 symbol, devise, combination thereof, designation,  
6 description, or representation that is the subject of  
7 the violation, or any reproduction, counterfeit, copy,  
8 or colorable imitation thereof . . . shall be delivered  
9 up and destroyed." Id.

10 As Plaintiff has established that Defendants' use  
11 of the AAA Marks is likely to cause confusion, this  
12 Court enters the permanent injunction as requested by  
13 Plaintiff. Without entry of a permanent injunction,  
14 Plaintiff would be exposed to the risk of continuing  
15 irreparable harm.

16 d. *The possibility of a dispute concerning the*  
17 *material facts.*

18 This Court finds it is not clear there would be any  
19 genuine dispute of material facts in the present case,  
20 as Defendants have not answered or otherwise appeared in  
21 this action. "Upon entry of default, the well-pleaded  
22 allegations in the complaint are taken as true, except  
23 those relating to damages." Tate, 2015 U.S. Dist. LEXIS  
24 3607 at \*12 (citing TeleVideo Sys., Inc. v. Heidenthal,  
25 826 F.2d 915, 917-918 (9th Cir. 1987)). "In addition,  
26 '[t]he district court is not required to make detailed  
27 findings of fact.'" Id. (citing Fair Housing of Marin

1 v. Combs, 285 F.3d 899, 908 (9th Cir. 2002)). In Tate,  
2 the district court found: "Since defendant never  
3 answered or otherwise appeared in this action, it is  
4 unclear whether there would be any genuine dispute of  
5 material facts." Id. As in Tate, this Court finds no  
6 impediment to entry of default judgment against  
7 Defendants.

8 e. *Whether Defendants' default was the product*  
9 *of excusable neglect.*

10 "Excusable neglect is an equitable concept that  
11 takes account of factors such as 'prejudice . . . , the  
12 length of the delay and its potential impact on judicial  
13 proceedings, the reason for the delay, including whether  
14 it was within the reasonable control of the movant, and  
15 whether the movant acted in good faith.'" Tate, 2015  
16 U.S. Dist. LEXIS 3607 at \*12 (quoting Pioneer Inv.  
17 Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 507  
18 U.S. 380, 395 (1993)). As Defendants have not responded  
19 or otherwise appeared in this action, there is no  
20 evidence before this Court that Defendants' default is  
21 the product of excusable neglect. Such failure to  
22 appear favors default judgment.

23 f. *The strong public policy favoring decisions*  
24 *on the merits.*

25 Although there is a strong policy underlying the  
26 Federal Rules of Civil Procedure, which favors decisions  
27 on the merits "whenever reasonably possible," Tate, 2015

1 U.S. Dist. LEXIS 3607 at \*13 (quoting Eitel, 782 F.2d at  
2 1427), "this preference, standing alone, is not  
3 dispositive.'" Id. (quoting Kloepping v. Fireman's  
4 Fund, 1996 U.S. Dist. LEXIS 1786 (N.D. Cal. 1996)). In  
5 deciding to grant default judgment, the Tate court  
6 noted: "Defendant's failure to answer the Complaint  
7 makes a decision on the merits impractical, if not  
8 impossible." Id. (citing PepsiCo, Inc. v. California  
9 Sec. Cans, 238 F.Supp.2d 1172, 1177 (C.D. Cal. 2002)).  
10 "Under Fed. R. Civ. P. 55(b), termination of a case  
11 before hearing the merits is allowed whenever a  
12 defendant fails to defend an action." Id.

13 In the present case, Defendants have similarly made  
14 it impractical to decide the matter on the merits. In  
15 fact, no adjudication of the substantive claims can  
16 occur because Defendants have not answered Plaintiff's  
17 Complaint. Because all Eitel factors weigh in favor of  
18 default judgment, this Court **GRANTS** Plaintiff's Motion  
19 for Default Judgment [20] against Defendants.

### 20 III. CONCLUSION

21 This Court **GRANTS** Plaintiff's Motion for Default  
22 Judgment. **GOOD CAUSE APPEARING**, this Court further  
23 **GRANTS** Plaintiff's request for entry of a permanent  
24 injunction against Defendants.

25  
26 DATED: April 11, 2016

s/ RONALD S.W. LEW  
Honorable Ronald S.W. Lew  
Senior U.S. District Judge